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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 9, 1999

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Re: Fort Mojave Telecommunications, Inc.
San Carlos Apache Telecommunications Utility, Inc.
DA 99-259 released February 11, 1999; and

Gila River Telecommunications, Inc.
Tohono O'odham Utility Authority
DA 99-399 released February 26, 1999.

Petitions for Waiver of Section 54.403(a)
of the Commission's Rules


Ex Parte Presentation

Dear Ms. Salas:

Attached hereto is a copy of Comments of San Carlos Apache Telecommunications Utility, Inc. filed this date in WT Docket No. 99-266. The Comments discuss the proceedings referenced above.

Please refer any questions or correspondence concerning this matter to the undersigned.

Respectfully submitted,


Sylvia Lesse

cc: Jill Canfield, NTCA

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 2054

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Extending Wireless)
Telecommunications Services)
To Tribal Lands)

WT Docket No. 99-266

To: The Commission

**COMMENTS OF SAN CARLOS APACHE
TELECOMMUNICATIONS UTILITY, INC.**

The San Carlos Apache Telecommunications Utility, Inc. ("San Carlos"),¹ by its attorney, and in response to the Commission's Notice of Proposed Rulemaking in the captioned proceeding,² hereby submits its comments. San Carlos is a tribally-owned entity, created for the specific purpose and duly authorized to provide telecommunications and other basic utility services throughout the San Carlos Apache Indian Reservation. San Carlos files these comments to ensure that the Commission's decisions regarding the promotion of wireless service on tribal lands are based upon fact and guided by the principles of universal service.

In 1996, San Carlos initiated the provision of telephone service on the San Carlos Apache Indian Reservation by acquiring all existing telephone facilities from the incumbent service

¹ San Carlos is a local exchange company, pursuant to authority granted by the Tribal Council. San Carlos is a "rural telephone company" under the Telecommunications Act of 1996. Pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended, San Carlos was designated an Eligible Telecommunications Carrier ("ETC") by the Commission. See Designation of Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., San Carlos Apache Telecommunications Utility, Inc., and Tohono O'odham Utility Authority as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, *Memorandum Opinion and Order*, DA 98-392 (rel. February 27, 1998).

² *In the Matter of Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266 (rel. Aug. 18, 1999) ("NPRM").

provider, US WEST Communications, Inc. These facilities consisted of an outdated switch and outside plant that offered “plain old telephone service” (“POTS”) to only approximately 25% of the population; much of this service was provided through party lines. Within the next several months, San Carlos will have succeeded in extending single-party touch-tone service to more than 90% of the people living and working on reservation lands. This project, requiring an initial build-out extending over 1375 square miles of heretofore unserved territory, provides equal access to long distance service providers and advanced services, including CLASS service and high-speed internet access capability.

As the Commission has recognized, low income within tribal lands is one of the major obstacles to increasing telephone penetration rates.³ San Carlos has been successful in improving the penetration rate throughout its exchange area to a level conservatively estimated at 75-80%, charging a reasonably affordable rate of \$15 per month. Nonetheless, it must be noted that even this modest rate may not be affordable to a large percentage of reservation residents; approximately 60% of San Carlos subscribers qualify for Lifeline assistance.⁴

³ “The relatively low incomes of most Indians on tribal lands and the rural (and, thus, generally high cost) environment of most tribal lands have produced extremely low telephone penetration rates – even compared to the penetration levels for other Americans of similar economic status living in rural areas.” NPRM at para. 2 (footnote omitted).

⁴ On February 12, 1999, San Carlos filed a request for waiver of the requirement that eligibility for certain Lifeline support payments be conditioned on “state” actions because San Carlos is not subject to the jurisdiction of any state commission. *See San Carlos Apache (footnote continues on next page)*

The success of San Carlos in bringing high-quality, reasonably-priced service to the San Carlos Apache Indian Reservation is the product of a combination of tribal initiative, and the availability of federal funding⁵ designed to ensure that rural areas benefit from a telecommunications infrastructure that provides not only basic connectivity but also supports and promotes regional economic endeavors; economic access to this infrastructure is critically important to the economic health and growth of the tribal community. San Carlos therefore confines its comments in this docket to three major issues arising out of this economic imperative -- the availability, quality and cost of service -- in order to focus the Commission's attention on the critical interplay between these issues.

San Carlos advocates the utilization of wireless service as a substitute for landline service where current circumstances render it economically inefficient to construct wire facilities. San Carlos itself makes use of the BETRS radio spectrum to provide telephone service where alternative landline service is not currently economically feasible. BETRS, and most other licensed radio services, are, however, unsatisfactory substitutes for wireline service because of their current inability to provide high-speed data delivery services via relatively narrow bandwidths. Consequently, subscribers served by radio are unable to make effective use of the internet, which, as the Commission recognizes, "is quickly becoming one of the most important media that people use not only for communications, but also to retrieve invaluable educational,

(continuation of footnote from previous page)

Telecommunications Utility, Inc., Petition for Waiver of Section 54.403(a) of the Commission's Rules, DA 99-259. San Carlos is still awaiting a decision in that matter.

⁵ San Carlos is a borrower under the Rural Utilities Service program.

medical and financial information, among other things.”⁶ It is clear, therefore, that landline service is currently superior to wireless service; uncritical acceptance of wireless service as a substitute for full access to telecommunications services and features potentially relegates a portion of the population to second-class, POTS-only service.

San Carlos also notes that the Commission’s concern about the relatively few new BETRS licenses being sought is at least as much a function of the Commission’s own licensing policies as it is one of technical constraints.⁷ Certainly, existing licensees and their prospective subscribers would benefit from a relaxation of the Commission’s height/power limitations. More important, however, is the existing prohibition on expanding licensed BETRS service, a problem which arises as a function of the Commission’s insistence that the BETRS spectrum will be subject to auction. Currently, new site-based BETRS licenses are awarded only on a secondary basis. Prudent planning prohibits reliance on the new BETRS frequencies which, if licensed now, are subject to reclamation by the future auction winner. The reason for the relatively few BETRS applications is, therefore, quite clearly a direct result of the Commission’s own licensing policies.

Accepting, *arguendo*, the validity of the Commission’s suggestion that wireless services, devoid of high speed capacity, can be considered a reasonable substitute for wireline service, the issue of the cost of wireless services to consumers is critical. San Carlos notes that the wireless service cited by the Commission which apparently provides the features and functionalities of conventional landline service (call waiting, call transfer, etc.) is priced at twice the San Carlos

⁶ NPRM at para. 2.

⁷ See NPRM at paras. 18-20.

monthly rate for 250 off-peak and 30 peak minutes.⁸ Furthermore, there is no indication that high-speed data services are available on either wireless service.

San Carlos is concerned that the Commission's misplaced reliance on wireless providers that are in no way affiliated with the relevant tribal organization will result in inferior service to tribal members. In addition, San Carlos is concerned that, to the extent that wireless carriers are either willing or required to provide specific standards and features of service which are not currently available to wireless customers, the costs of these improvements, as to which the records is completely silent, will inevitably be passed along to consumers. The Commission wisely has left decisions regarding wireless deployment and rates to the marketplace. As a result, in many rural areas of the country, no reliable cellular or PCS service is even available today. Where wireless service is currently available in rural areas, it may not be engineered to accommodate landline traffic patterns. Neither the amount nor type of costs consumers ultimately will bear is clear, nor is there any regulatory control over these costs.

There is, moreover, no reason to believe that the larger carriers' historic indifference to serving the most rural areas will change perceptibly in the future. Larger, non-local carriers will continue their practice of concentrating on pockets of profitability. This has a particularly insidious effect on reservations because the export of profits from reservation lands to corporate headquarters across the nation undermines, rather than bolsters, economic development and economic opportunity on tribal lands. Large, national wireless carriers should not be encouraged to either forage on tribal lands or raid the universal service fund where the tribal organization has demonstrated an interest, willingness and commitment to the deployment of service to its tribal

⁸ *Id.* at para. 10.

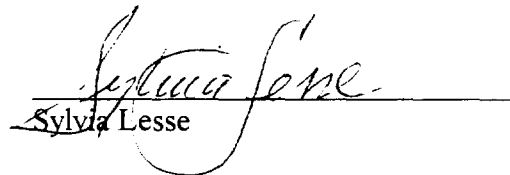
members.

The Commission recognizes poverty as the ultimate cause of low penetration rates and the major impediment to realizing the goal of universal service on tribal lands. Accordingly, the Commission should weigh carefully whether its proposals have the potential to cause an overall rise in the costs of access to full-service communications services, and whether its proposed solutions reinforce, rather than provide the possibility of a remedy to, the limitation on economic opportunities on reservations. San Carlos urges the Commission to consider critically the seeming panacea offered by large national wireless carriers that have no affiliation with the tribe. San Carlos trusts that the Commission will avoid the temptation to consider short-term, technically feasible safety pins as a substitute for the statutory goal of universally affordable, universally accessible, high-quality telecommunications services.

Respectfully submitted,

**SAN CARLOS APACHE
TELECOMMUNICATIONS UTILITY, INC.**

By:


Sylvia Lesse

Its Attorney

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November 9, 1999

DECLARATION OF BRENT KENNEDY

I Brent Kennedy, General Manager of San Carlos Apache Telecommunications Utility, Inc., do hereby state that I have read the foregoing Comments of San Carlos Apache Telecommunications Utility, Inc. I certify under penalty of perjury that the facts presented therein are true and correct.

Brent A. Kennedy
Brent Kennedy

11/8/99
Date

CERTIFICATE OF SERVICE

I, Teresa Rhea, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Comments of San Carlos Apache Telecommunications Utility, Inc. was served this 9th day of November, 1999, by hand delivery to the following parties:


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